



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr C Kitchen  
**Respondent:** Billericay Blinds Limited  
**Heard at:** East London Hearing Centre (by telephone)  
**On:** 25 October 2022  
**Before:** Employment Judge Brewer

## Representation

Claimant: No attendance  
Respondent: Mr P Willis, Owner

**JUDGMENT** having been sent to the parties on 31 October 2022, and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

# REASONS

## Introduction

1. This case was listed for a final hearing before me to consider the claimants claims for holiday pay and what appears to be a claimed for unpaid fuel expenses.
2. The claimant had claimed unfair dismissal but lacks the necessary qualifying service to bring that claim and that claim had been dismissed.
3. The claimant failed to attend the hearing, he did not seek a postponement and gave no reason for his non-attendance.
4. The respondent was represented by its owner Mr. Willis.

## Issues

5. The issues in the case were as follows.
6. In relation to the claim for holiday pay, at the effective date of termination was the claimant owed outstanding holiday pay and, if so, how much.
7. In relation to the claim for unpaid fuel expenses, was the claimant owed any expenses, and if so upon what basis was his claim made?

## Law

8. The claims being pursued by the claimant could be presented as either unauthorised deductions from wages or potentially a claim for breach of contract.
9. In relation to a claim for unlawful deductions from wages, the general prohibition on deductions is set out in section 13(1) Employment Rights Act 1996 (ERA), which states that:

*'An employer shall not make a deduction from wages of a worker employed by him.'*

10. However, it goes on to make it clear that this prohibition does not include deductions authorised by statute or contract, or where the worker has previously agreed in writing to the making of the deduction (section 13(1)(a) and (b)).
11. In order to bring an unlawful deductions claim the claimant must be, or have been at the relevant time, a worker. A 'worker' is defined by section 230(3) ERA as an individual who has entered into or works under (or, where the employment has ceased, has worked under):
  - a. a contract of employment (defined as a 'contract of service or apprenticeship'), or
  - b. any other contract, whether express or implied, and (if express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual.

12. Section 27(1) ERA defines 'wages' as:

*'any sums payable to the worker in connection with his employment'*

13. This includes *'any fee, bonus, commission, holiday pay or other emolument referable to the employment'* (section 27(1)(a) ERA). These may be payable under the contract 'or otherwise'.
14. According to the Court of Appeal in **New Century Cleaning Co Ltd v Church** 2000 IRLR 27, CA, the term *'or otherwise'* does not extend the definition of wages beyond sums to which the worker has some legal, but not necessarily contractual, entitlement.
15. Finally, there is a need to determine what was 'properly payable' on any given occasion and this will involve the Tribunal in the resolution of disputes over what the worker is contractually entitled to receive by way of wages. The approach tribunals should take in resolving such disputes is that adopted by the civil courts in contractual actions — **Greg May (Carpet Fitters and Contractors) Ltd v Dring** 1990 ICR 188, EAT. In other words,

tribunals must decide, on the ordinary principles of common law and contract, the total amount of wages that was properly payable to the worker on the relevant occasion.

16. The tribunal has jurisdiction to hear claim for breach of contract if the summer claimed arises or is outstanding at the date of termination (see the Extension of Jurisdiction Order 1993).
17. In claims both in relation to breach of contract and on authorised deductions the burden of proof is on the claimant.

### **Findings of fact and conclusions**

18. Given that the claimant failed to attend the hearing the findings of fact are necessarily brief.
19. The claimant was employed from one September 2021 to 3 May 2022 as a curtain and blind fitter.
20. The claimant provided no evidence of any outstanding payments whether wages or otherwise.
21. The evidence of the respondent is that they had paid to the claimant all outstanding monies.
22. Given the absence of any evidence from the claimant of any outstanding payments the only conclusions I could sensibly reach are as follows.
23. There is no evidence not the claimant was owed any accrued untaken holiday pay at the date of termination of his employment.
24. In relation to the claim for fuel expenses, expenses are not wages within the meaning of section 27 of the Employment Rights Act 1996. The claimant brought no evidence that he had a contractual right to be paid fuel expenses but even if he had, he brought no evidence of any outstanding fuel expenses at the date of termination of his employment.
25. For those reasons all of his claims are dismissed.

**Employment Judge Brewer  
Date: 7 November 2022**